No. 79-1921

Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980

TREASURER, PRINCE GEORGE'S COUNTY, MARYLAND,
Petitioner,

v.

WASHINGTON NATIONAL ARENA
LIMITED PARTNERSHIP, *et al.*,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

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QUESTION PRESENTED

Whether the Due Process Clause of the Fourteenth Amendment to the United States Constitution, *or*, Articles 19 and/or 24 of the Maryland Declaration of Rights prohibit an attempt by State and local government to refuse to refund an admitted illegally collected higher rate of taxation on the recordation of instruments affecting land based on "curative" State legislation enacted in 1976 that purported to validate the illegal tax rate as of 1968.

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A. General Resolution No. 21, Board of County Commissioners of Prince George's County, Adopted May 10, 1968 . . . . . 1a

B. Constitution of Maryland, Declaration of Rights, Article 19 . . . . . 2a

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SUPPLEMENTAL CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The pertinent portions of the following, omitted by the Petitioner in its Petition for a Writ of Certiorari and appendices thereto, are printed in Respondent's Appendix:

Constitution of Maryland, Declaration of Rights; Article 19;

General Resolution No. 21 of the Board of County Commissioners of Prince George's County, Maryland, Adopted May 10, 1968.

Petitioner failed to consult with Respondents concerning the content of the appendices annexed to the Petition for a Writ of Certiorari submitted to this Court by the Petitioner.

SUPPLEMENTAL STATEMENT OF THE CASE

Prior to establishing the rate of tax at $1.65 per $500 of consideration or secured debt, Prince George's County, Maryland, in the same year (1968) had set the rate at $1.10 per $500 by adoption of General Resolution No. 21 of the Board of County Commissioners, reproduced herein at p. 1a. It was General Resolution No. 21, and not General Resolution No. 32 (purportedly resetting the rate at $1.65 per $500), which the Court of Appeals of Maryland had found to have been the lawful rate of taxation in *Prince George's County, Maryland v. White*, 275 Md. 314, 340 A.2d 236 (1975).

Footnote numbered 1 of the Petition for a Writ of Certiorari implies that the Court of Appeals of Maryland could only have relied on Article 24 (formerly Article 23 prior to November 7, 1978) of the Maryland Declaration of Rights. Respondents argued below for the application of Article 19 of the Maryland Declaration of Rights, reproduced herein at p. 3a. The Court of Appeals of Maryland, in rendering its decision (A. 24-45), accepted Respondents' arguments as a ground of its opinion that the Petitioner's actions impaired Respondents' property rights "in violation of the United States Constitution and the Maryland Declaration of Rights."

REASONS FOR DENYING A WRIT

The decision of the Maryland Court of Appeals in this matter is supportable as a matter of State law alone, and is not subject to review by the Supreme Court even though the opinion *also* discussed and relied on prior Supreme Court decisions and the Fourteenth Amendment to the United States Constitution. *Maryland v. Baltimore Radio Show, Inc.*, 338 U.S. 912 (1950). Provisions of the Maryland Declaration of Rights, specifically Articles 19 and 24, were argued in the court below. The Court of Appeals of Maryland justified its holding in the instant case by reference to the Maryland Declaration of Rights as much as by any reference to the Fourteenth Amendment of the Constitution of the United States. Moreover, the only statutes or ordinances construed by the Maryland Court are purely local in origin and impact. The impact of the decision applied only to one County (Prince George's) in Maryland, and then only for the period 1968-1976. Even within the limited time frame involved, the number of taxpayers for which the ruling has significance is finitely limited to those who pursued their administrative remedies in a timely manner specifically as provided for by State and local statute and ordinance. Denying the writ would be in keeping with the Supreme Court's refusal to review a case which is based upon statutes confined in their operation to a political subdivision or which declares the common law of that political subdivision. *Del Vecchio v. Bowers*, 296 U.S. 280 (1935).

The decision of the Maryland Court of Appeals is supportable solely on its view that Articles 19 and/or 24 of the Maryland Declaration of Rights create rights vested in Respondents which Petitioner's conduct could not impair. This is true regardless of whether the due process

clause of the Fourteenth Amendment to the United States Constitution was correctly interpreted or applied to the facts of the instant case. If the Maryland Court's view of Maryland constitutional provisions is more expansive than holdings interpreting Federal constitutional provisions, such a position by a state court has recently been sanctioned by the Supreme Court in *Pruneyard Shopping Center v. Robins,* ___ U.S. ___, 100 S. Ct. 2035 (1980). In *Pruneyard* (a freedom of religion and expression case), a California State constitutional provision similar to the U.S. Constitution's First Amendment was interpreted to create a more expansive right than its federal counterpart.

No federal question of substance is presented by this case; only the interpretation of a state statute as applied to a county in that state is involved. No precedential impact outside of Maryland will follow from the decision below. A substantial federal question is not present merely because a federal constitutional issue and decisions of this Court are addressed in the opinion of the State court, or because those issues abstractly considered may present an intellectually interesting or solid problem. *Rice v. Sioux City Memorial Park Cemetery, Inc.,* 349 U.S. 70 (1955).

To the extent that a federal question (due process clause of the Fourteenth Amendment to the U.S. Constitution) was dealt with at all by the Court of Appeals of Maryland, that court's decision was in accord with applicable prior decisions of the Supreme Court. The crux of the case below was the ability of local government to enact retroactive, curative legislation so as to validate an admittedly illegal rate of taxation that had been collected by the County for eight (8) years. The County attempted to use this act as a bar against tax-

payers who had already begun the process triggering refunds to which they were entitled under a prior decision of the Maryland Court of Appeals in *Prince George's County, Maryland v. White,* 275 Md. 314, 340 A.2d 236 (1975), declaring the rate of taxation illegal. The Court of Appeals of Maryland in the instant case interpreted as controlling *Forbes Pioneer Boat Line v. Board of Commissioners,* 258 U.S. 338 (1922), which was in turn applied and construed in Maryland by *Comptroller v. Glenn L. Martin Co.,* 216 Md. 235, 140 A.2d 288 (1957), *cert. denied,* 358 U.S. 820 (1958). *Forbes* has been cited and relied on in recent federal cases. *Simpson v. United States,* 423 F. Supp. 720 (D. Iowa 1976); *de Rodulfa v. United States,* 461 F.2d 1240 (D.C. Cir. 1972); *Block v. District of Columbia,* 492 F.2d 646 (D.C. Cir. 1974).

In *Simpson, supra,* the federal government sought in the year 1966 to tax the increased value of the assets of petitioner's company, a proprietorship electing to be taxed at corporate rates, retroactive to the year 1960 when the election was made. The federal district court, after discussing the relevant decisions of this Court on the issue of retroactive legislation, and particularly *Welch v. Henry,* 305 U.S. 134 (1938), stated:

> The United States Supreme Court thus intimated that there exists a time beyond which a taxing statute may not constitutionally be given retroactive effect. . . . Regulation 1.1361-16(b), requiring at least six years of retroactive taxation in this case and on its face conceivably 10 years in the case of a proprietorship electing under § 1361(a) in 1955, is in violation of the due process clause of the Fifth Amendment and therefore invalid. 423 F. Supp. at 731.

Moreover, in *Graham v. Goodcell,* 282 U.S. 409, 426 (1931), this Court reiterated the general rule announced

in *Forbes* "that it is not consistent with due process to take away from a private party a right to recover the amount that is due when the act is passed." The "curative" statute involved in *Graham* was upheld, but in so holding this Court drew an important distinction which separates the facts of that case from the case at bar.

> It is apparent, as the result of the decisions, that a distinction is made between a bare attempt of the legislature retroactively to create liabilities for transactions which, fully consummated in the past, are deemed to leave no ground for legislative intervention, and the case of a curative statute aptly designed to remedy mistakes and defects in the administration of government where the remedy can be applied without injustice. 282 U.S. at 429.

This Court then cites the case of *Charlotte Harbor & Northern Ry. Co. v. Welles,* 260 U.S. 8 (1922), for the proposition that: "The power is necessary that government may not be defeated by *omissions and inaccuracies* in the exercise of functions necessary to its administration." Emphasis added. 282 U.S. at 430.

Unlike the situations in *Graham* and *Charlotte Harbor,* the statute involved in the present case did not seek to rectify a "technical" defect or an omission or mistake in the authority of Prince George's County to collect recordation taxes at the $1.65 rate. Rather it sought to supply a legislative intent and ability that had been found in 1975 in *Prince George's County, Maryland v. White, supra,* to have been a nullity and void as far back as 1968.

CONCLUSION

The Petition for Writ of Certiorari to the Court of Appeals of Maryland should be denied.

Respectfully submitted,

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APPENDIX A

BOARD OF COUNTY COMMISSIONERS
PRINCE GEORGE'S COUNTY

GENERAL PROPOSAL NO. 21–1968

GENERAL RESOLUTION NO. 21–1968

WHEREAS, the County Commissioners of Prince George's County are authorized by Chapter 301 of the Acts of 1968, Maryland Laws, (an act to add new Section 277(r) of Article 81 of the Annotated Code of Maryland, 1965 Replacement Volume) to adopt by resolution a rate of taxes for the recordation of instruments conveying title to property and instruments securing a debt:

SECTION 1. THEREFORE, BE IT RESOLVED, by the Board of County Commissioners for Prince George's County, that the tax imposed by Article 81, 277(a), Annotated Code of Maryland, 1957 Edition (1965 Replacement Volume) on written instruments shall be at the following rates:

In the case of instruments conveying title to property, the tax shall be at the rate of $1.10 for each $500.00, or fractional part thereof, of the actual consideration paid, or to be paid; and in the case of instruments securing a debt, the tax shall be at the rate of $1.10 for each $500.00 of the principal amount of the debt secured.

The tax imposed shall be paid to and collected by the Treasurer of Prince George's County, and paid over by said Treasurer to the County Commissioners.

SECTION 2. *And be it further resolved,* that this Resolution shall take effect July 1, 1968.

Adopted this 10th day of May, 1968.

BOARD OF COUNTY COMMISSIONERS FOR
PRINCE GEORGE'S COUNTY, MARYLAND,

By: _____
Vice-Chairman

ATTEST:

/s/ _____
Jean M. Schmuhl, Clerk

APPENDIX B

CONSTITUTION OF MARYLAND

DECLARATION OF RIGHTS

ARTICLE 19. Remedy for injury to person or property.

That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the land.